

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into
Implementation of Pub. Util. Code § 390.

(U 39-E)

Rulemaking 99-11-022

**ADMINISTRATIVE LAW JUDGE'S RULING
SETTING PREHEARING CONFERENCE
AND REQUIRING PREHEARING CONFERENCE STATEMENTS**

Summary

A prehearing conference (PHC) is set for September 7, 2005, to consider the matter of qualifying facilities (QF) that switched to market clearing prices determined by the California Power Exchange (PX) from June 2000 through January 18, 2001 (QF Switchers). The PHC will address the need for evidentiary hearings, the scope of issues, and other procedural matters.

Parties that wish to participate in this phase of the proceeding shall file and serve PHC Statements by August 30, 2005.

Background

On April 29, 2004, Pacific Gas and Electric Company (PG&E), the Office of Ratepayer Advocates (ORA), and The Utility Reform Network (TURN) moved for a briefing schedule to determine the appropriate price for QF Switchers

between June 2000 and January 18, 2001 (Motion).¹ The Motion requests filings from utilities, workshops to discuss QF refunds and a Commission order for a refund methodology.

In a May 14, 2004 response to the Motion, Calpine Corporation (Calpine) argues that any “true-up” addressing potential overpayments or underpayments to QFs must consider additional issues. Calpine contends that reduction of QF payments should not be based on Federal Energy Regulatory Commission (FERC) rulings, and that suggested payment methodologies outlined in the Motion do not reflect avoided costs and cannot lawfully be used for refunds. Calpine recommends a procedural schedule that provides for a PHC, direct showings, and evidentiary hearings.

Also, on May 14, 2004, the California Cogeneration Council (CCC) and the Independent Energy Producers (IEP) filed responses to the Motion. CCC argues against the simplicity of the refund procedure recommended in the Motion, and recommends establishing formal hearings. IEP recommends that there no longer exists a PX market clearing price by which to true-up payments and therefore the Motion should be denied.

A reply by PG&E, ORA, and TURN to these responses argues that hearings should be held, but for the limited purpose of constructing a price series to determine the basis for refunds. The hearings would only be held after a determination of whether the Public Utilities Regulatory and Policy Act and state law require a true-up and whether mitigated market clearing prices established by FERC are appropriate for determining QF Switchers’ prices.

¹ The PX ceased operating on January 18, 2001.

On May 16, 2005, in comments filed in another phase of this proceeding, PG&E, ORA, and TURN noted that the motion addressing QF Switchers had not yet been ruled upon. PG&E, ORA and TURN recommend that if hearings are held to address Short Run Avoided Costs (SRAC) pricing during the Remand Period (December 2000 – March 2001), that for purposes of efficiency, the hearings should also address the QF Switchers matter. In response, CCC argues that SRAC pricing during the Remand Period is a different issue than pricing paid to QF Switchers, and that there has been insufficient notice to parties if both issues were combined in hearings.

Discussion

Although there is some relationship between SRAC pricing during the Remand Period and any potential true-up of QF prices, the matter of QF Switchers is different from SRAC pricing in the Remand Period and should be addressed separately.

Accordingly, a PHC will be held on September 7, 2005, in the Commission's Courtroom, San Francisco, to address the matter of QFs that switched to PX pricing from June 2000 to January 18, 2001.

Parties who wish to participate in this phase of the proceeding shall file and serve PHC Statements. PHC Statements should contain or address the following: (1) a list and description of disputed issues; (2) recommendations for evidentiary hearings; (3) factual issues to be determined, if necessary, in evidentiary hearings; (4) a schedule for this phase of the proceeding, with specific milestones and dates; and (5) any other procedural matters necessary to resolve the matter of QF Switchers from June 2000 through January 18, 2001.

PHC Statements shall be served on parties by August 30, 2005.

Therefore, **IT IS RULED** that:

1. A prehearing conference (PHC) will be held on September 7, 2005, in the Commission's Courtroom, San Francisco, California, at 10:00 a.m.
2. The purpose of the PHC is to determine procedures necessary to resolve the matter of QFs that switched to PX pricing from June 2000 to January 18, 2001.
3. Parties who wish to participate in this phase of the proceeding shall file and serve PHC Statements as described above.
4. PHC Statements shall be served on parties by August 30, 2005.

Dated August 8, 2005, at San Francisco, California.

/s/ BRUCE DEBERRY

Bruce DeBerry
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Setting Prehearing Conference and Requiring Prehearing Conference Statements on all parties of record in this proceeding or their attorneys of record.

Dated August 8, 2005, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.